

SETTLEMENT AGREEMENT AND RELEASE

I. PARTIES

This Settlement Agreement and Release ("Agreement") is entered into between the United States of America, acting through the United States Attorney's Office for the Eastern District of Pennsylvania and on behalf of the Office of Inspector General ("OIG-HHS") of the Department of Health and Human Services ("HHS"), and the Albert Einstein Healthcare Network, including its subsidiaries, divisions, foundations, departments, and clinical practice organizations and corporations (collectively "AEHN") (all collectively hereafter referred to as "the Parties"), through their authorized representatives.

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. AEHN is an institution in Pennsylvania that, during the period covered by this Agreement, employed and/or billed for the services of physicians ("AEHN Physician Faculty") in their capacities of providing supervision to resident physicians and/or providing professional services.

B. The Medicare Program ("Medicare"), which was established by Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-

1395ggg, allows under Part A, for the reimbursement for salaries of hospital residents and interns and the teaching activities of the clinical faculty (such as the AEHN Physician Faculty) provided to these residents and interns, and under Part B, for reimbursement of professional services provided directly by the clinical faculty or by residents and interns under the clinical faculty's direct, personal, and identifiable supervision and control.

C. OIG-HHS has announced a nationwide initiative to review compliance with the rules governing the Medicare Part B payment for physicians at teaching hospitals (this initiative is also known as "PATH").

D. The United States contends that AEHN submitted or caused to be submitted claims for payment to Medicare.

E. The United States contends that it has certain civil claims against AEHN under the False Claims Act, 31 U.S.C. §§ 3729-3733, other federal statutes and/or common law doctrines, for engaging in the following conduct during the period from January, 1995 through June, 1996: (1) the submission of claims by AEHN to the Medicare Program for certain services, provided at AEHN and other clinical practice locations, that AEHN represented were personally and identifiably provided by AEHN Physician

Faculty when AEHN does not possess sufficient documentary evidence, as required by the Medicare Program, to show with respect to those certain claims that the respective physicians were personally and identifiably involved in the performance of such services, and (2) the submission of claims by AEHN to Medicare for professional services of AEHN Physician Faculty in connection with the Residency Program at AEHN, which claims were improperly upcoded and/or represented a greater level of service than those services actually provided (hereinafter collectively referred to as the "Covered Conduct"). The United States alleges that, as the result of the Covered Conduct, AEHN received payments to which it was not entitled.

F. The United States also contends that it has certain administrative claims against AEHN under the provision for permissive exclusion from the Medicare, Medicaid, and other Federal health care programs, 42 U.S.C. § 1320a-7(b)(7), and the provision for civil monetary penalties, 42 U.S.C. § 1320a-7a, for the Covered Conduct.

G. AEHN denies the contentions of the United States as set forth in Paragraphs E and F above and denies that it has any liability relating to these contentions and allegations.

H. This Agreement is neither an admission of liability by AEHN nor a concession by the United States that its claims are not well founded.

I. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

III. TERMS AND CONDITIONS

1. AEHN agrees to pay to the United States \$1,982,017.00 (the "Settlement Amount"). AEHN agrees to pay the Settlement Amount by electronic funds transfer pursuant to written instructions to be provided by the Financial Litigation Unit of the United States Attorney's Office, Philadelphia, Pennsylvania. AEHN agrees to make this electronic funds transfer no later than the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 4 below, in consideration of the obligations of AEHN set forth in this Agreement, conditioned upon AEHN's payment in full of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies and departments) agrees to release AEHN and its current and former physician and non-physician employees (insofar as they have acted in their official

capacities as employees of AEHN) and its current and former trustees, directors, officers, agents, regents, and affiliates together with its subsidiaries, divisions, foundations, departments, and clinical practice organizations and corporation: (the "Released Entities and Individuals") from any civil or administrative monetary claims, causes of action, adjustments, and set-offs of any kind the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, disgorgement, restitution, recoupment, money had and received, constructive trust, breach of contract, and fraud, for the Covered Conduct.

3. OIG-HHS expressly reserves all rights to institute, direct, or to maintain any administrative action seeking exclusion against AEHN, and/or its officers, directors, and employees from Medicare, Medicaid, or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) under 42 U.S.C. § 1320a-7(a) (mandatory exclusion), or 42 U.S.C. § 1320a-7(b) (permissive exclusion).

4. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including AEHN) are the following:

(a) Any civil, criminal or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code);

(b) Any criminal liability;

(c) Except as explicitly stated in this Agreement, any administrative liability, including mandatory and permissive exclusion from Federal health care programs;

(d) Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

(e) Any liability based upon such obligations as are created by this Agreement;

(f) Any professional liability claims involving services provided by AEHN;

(g) Any civil or administrative liability of individuals (including current or former directors, officers, employees, agents, or shareholders of AEHN) who receive written notification that they are the target of a criminal investigation (as defined in the United States Attorneys' Manual), are indicted, charged, or convicted, or who enter into a plea agreement related to the Covered Conduct; and

(h) any claims against any individual physicians employed by AEHN arising out of claims made to the Medicare program, where such claims were not billed by, or on behalf of, AEHN.

5. AEHN waives and shall not assert any defenses AEHN may have to any criminal prosecution or administrative action relating to the Covered Conduct, which defenses may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. AEHN agrees that this Agreement is not punitive in purpose or effect. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue Laws, Title 26 of the United States Code.

6. AEHN and the Released Entities and Individuals fully and finally release the United States, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) which AEHN has asserted, could have asserted, or may assert in the

future against the United States, its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

7. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare carrier or intermediary or any State payer, related to the Covered Conduct; and AEHN shall not resubmit to any Medicare carrier or intermediary or any State payer any previously denied claims related to the Covered Conduct, and shall not appeal any such denials of claims.

8. AEHN agrees to the following:

(a) Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation (FAR) at 48 C.F.R. § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf of AEHN, its present or former officers, directors, employees, shareholders, and agents in connection with the following shall be "unallowable costs" on contracts with the United States and under the Medicare Program, Medicaid Program, TRICARE Program, Veterans Administration ("VA") Program, and Federal Employees Health Benefits Program ("FEHBP"):

(1) the matters covered by this Agreement,

(2) the United States' audit(s) and civil investigation of the matters covered by this Agreement,

(3) AEHN's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees),

(4) the negotiation and performance of this Agreement, and

(5) the payment AEHN makes to the United States pursuant to this Agreement, including any costs and attorneys fees.

However, nothing in this Paragraph affects the status of costs that are not allowable based on any other authority applicable to AEHN.

(b) Future Treatment of Unallowable Costs: If applicable, these unallowable costs shall be separately determined and accounted for by AEHN on all applicable filed cost reports either (i) in non-reimbursable cost centers or (ii) as a reduction to allowable costs, and AEHN shall not charge such unallowable costs directly or indirectly to any contracts with the United States or any State Medicaid Program, or seek payment

for such unallowable costs through any cost report, cost statement, information statement, or payment request submitted by AEHN or any of its subsidiaries to the Medicare, Medicaid, TRICARE, VA, or FEHBP Programs.

(c) Treatment of Unallowable Costs Previously Submitted for Payment: AEHN further agrees that, if applicable, within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid, VA, and FEHBP fiscal agents, any unallowable costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid Program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by AEHN or any of its subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. AEHN agrees that the United States, at a minimum, shall be entitled to recoup from AEHN any overpayment plus applicable interest and penalties as a result of the inclusion of such unallowable costs on previously-submitted cost

reports, information reports, cost statements, or requests for payment.

If applicable, any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice, and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by AEHN or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this Paragraph) on AEHN or any of its subsidiaries' cost reports, cost statements, or information reports. Nothing in this Agreement shall constitute a waiver of the rights of the United States to examine or reexamine the unallowable costs described in this Paragraph.

9. This Agreement is intended to be for the benefit of the Parties and the Released Entities and Individuals only, and by this instrument the Parties do not release any claims against any other person or entity.

10. AEHN waives and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

11. AEHN warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. § 547(b)(3) and 548(a)(1)(A)(ii)(I), and shall remain solvent following its payment to the United States of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to AEHN, within the meaning of 11 U.S.C. § 547(c)(1); and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended and do, in fact, represent a reasonably equivalent exchange of value which is not intended to hinder, delay, or defraud any entity to which AEHN was or became indebted, on or after the date of this transfer, all within the meaning of 11 U.S.C. § 548(a)(1).

12. Each Party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

13. AEHN represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

14. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement shall be the United States District Court for the Eastern District of Pennsylvania.

15. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

16. The individuals signing this Agreement on behalf of AEHN represent and warrant that they are authorized by AEHN to execute this Agreement. The United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

17. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

18. The "Effective Date" of this Agreement shall be the date of signature of the last signatory to the Agreement.

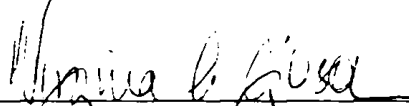
Facsimiles of signatures shall constitute acceptable, binding signatures for the purposes of this Agreement.

19. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

20. This Agreement is binding on AEHN's successors, transferees, heirs, and assigns.


THE UNITED STATES OF AMERICA

PATRICK L. MEEHAN
United States Attorney



VIRGINIA A. GIBSON
Assistant United States Attorney
Chief, Civil Division

DATE: 5-27-03



MARGARET L. HUTCHINSON
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DATE: 5-27-03

By: Larry J. Goldberg
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Date: 3/27/03

Assistant Inspector General for Legal Affairs
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ALBERT EINSTEIN HEALTHCARE NETWORK

By: A. Susan Bernini

Date: 4.28.03

A. SUSAN BERNINI
Interim Chief Executive Officer

By: Thomas H. Lee II

Date: 5/19/03

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